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U.S. Citizenship and Immigration Services

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MAR 0 4 2004

FILE: [redacted] Office: PHOENIX, AZ Date:

IN RE: [redacted]

PETITION: Application for Waiver of Grounds of Inadmissibility under Sections 212(h) and (i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(h) and (i)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Interim District Director, Phoenix, Arizona, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under sections 212(a)(2)(A)(i)(I) and 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(2)(A)(i)(I) and 1182(a)(6)(C)(i), for having been convicted of a crime involving moral turpitude and for having procured and utilized a fraudulent alien registration card (Form I-551) in order to obtain unauthorized employment in the United States. The applicant married a United States citizen on March 10, 1996. He seeks a waiver in order to remain in the United States with his U.S. citizen spouse and children.

The interim district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *See* Decision of the Interim District Director, dated April 15, 2003.

On appeal, counsel asserts that the Immigration and Naturalization Service [now Citizenship and Immigration Services (CIS)] erred in its analysis of the evidence presented regarding the applicant's eligibility for relief, wrongly concluding that the applicant has not demonstrated that extreme hardship would be imposed on a qualifying relative.

The record contains an affidavit of the applicant, dated June 9, 2000; an affidavit of the applicant's spouse, dated June 9, 2000; copies of U.S. Department of State reports addressing human rights practices and country conditions in Mexico; a letter from the parents of the applicant's spouse, dated June 8, 2000; letters of support; copies of photographs of the applicant and his family; copies of the Certificates of Title for two automobiles jointly owned by the applicant and his wife; copies of mortgage interest statements addressed to the applicant and his wife; copies of court documents and police reports regarding the applicant's criminal record; a copy and translation of the Mexican birth certificate of the applicant; copies of the U.S. birth certificates of the applicant's children; letters verifying the employment of the applicant and his spouse and copies of tax and financial documents for the applicant and his spouse. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects on July 27, 1996 and December 26, 1998, the applicant was arrested on charges of domestic assault. On both occasions, the applicant was subsequently convicted.

Section 212(a)(2)(A) of the Act states in pertinent part:

> (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
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> > (I) a crime involving moral turpitude . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) of the Act provides, in pertinent part:

> (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -
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> . . . .

> (1)(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

Section 212(a)(6)(C)(i) of the Act states:

> (6) Illegal entrants and immigration violators.-
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> . . . .
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> (C) Misrepresentation.-
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> (i) In general.-Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The AAO finds that presenting a false alien registration card in order to gain employment from a private employer does not render the applicant inadmissible. The AAO finds further that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act because he did not make false statements or present fraudulent documentation to an immigration or government official in order to obtain an immigration benefit. *See Matter of L-L-,* 9 I&N Dec.324 (1961).

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) held that a respondent who purchased a fraudulent U.S. birth certificate, then used the birth certificate to fraudulently procure a government issued social security number, and later used both documents to procure a government issued U.S. passport, which aided him in traveling in and out of the United States and in obtaining employment in the United States:

> [C]learly [fell] within the purview of section 212(a)(6)(C)(i) of the Act. By fraud and by willful misrepresentation of a material fact, he sought to procure both "documentation" and "other benefits" under the Act.

The majority opinion provided no further clarification regarding their inadmissibility finding against the applicant. However, the concurring opinion written by Board Chairman, [redacted] and Board Member [redacted] made clear the BIA's position on the issue of employment by stating that:

> [T]he majority's opinion correctly notes that in purchasing the fraudulent birth certificate, using it to procure a fraudulent social security card, and subsequently using these documents to seek to procure a United States passport in order to travel into and out of the United States and seek employment, the respondent sought to procure both "documentation" and "other benefits" under the Act . . . . However, a small clarification is needed. The other benefits

> under the Act the respondent sought to procure are the right to travel with a United States passport pursuant to section 215(b) of the Act, 8 U.S.C. § 1185(b) (1994). The majority's language may be misinterpreted as suggesting that using the fraudulent passport to obtain employment is obtaining a benefit under the Act.
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> . . . .
>
> Although the use or possession of such document is punishable under section 274C of the Act . . . working in the United States is not "a benefit provided under this Act," and we have specifically held that a violation of section 274C and fraud or misrepresentation under section 212(a)(6)(C)(i) of the Act are not equivalent.

Therefore, the AAO finds that the interim district director erred in finding the applicant inadmissible to the United States under section 212(a)(6)(C)(i) of the Act. Therefore, the AAO turns to consideration of the applicant's inadmissibility pursuant to section 212(a)(2)(A) of the Act.

A section 212(h) waiver of the bar to admission resulting from section 212(a)(2)(A) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, child or parent of the applicant. Any hardship suffered by the applicant himself is irrelevant to waiver proceedings under section 212(h) of the Act. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez provides a list of factors the BIA deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *See* 22 I&N Dec. at 565-566.

Counsel offers the affidavits of the applicant and his spouse as well as country condition reports for Mexico to support the assertion that relocation to Mexico would impose extreme hardship on the applicant's spouse and children. The applicant contends that his children's educational needs would not be met in Mexico because decent education is not available and his children speak English. He further asserts that his wife would be unable to obtain employment in Mexico for similar reasons. *See* Affidavit of [redacted] dated June 9, 2000.

However, counsel does not establish extreme hardship to the applicant's spouse and children if they remain in the United States. The AAO notes that the applicant's spouse and children, as U.S. citizens, are not required to depart from the United States as a result of the denial of the applicant's waiver. Both the applicant and his wife contend that the applicant's spouse cannot support herself. The applicant's wife states that if her husband departs from the United States, "I would have to seek welfare or government support." *See* Affidavit of [redacted] dated June 9, 2000. The record does not establish beyond the unsubstantiated assertions of the applicant and his wife that the applicant's spouse is unable to financially support herself. The record does not establish that the applicant will be unable to continue to provide for his family from a location outside of

the United States. Moreover, the AAO notes that the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. The AAO recognizes that the applicant's wife and children will endure hardship as a result of separation from the applicant. However, their situation, if they remain in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse and children caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.